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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. FRANK EDWARD EDMONDS, Defendant and Appellant.	B291146 (Los Angeles County Super. Ct. No. TA141211)

APPEAL from a judgment of the Superior Court of Los Angeles County. Sean D. Coen, Judge. Affirmed in part, reversed in part, and remanded.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

Frank Edward Edmonds appeals the judgment entered following a jury trial in which he was convicted of one count of resisting an executive officer. (Pen. Code,[1] § 69; (count 1).) Before trial appellant had pleaded no contest to count 2, battery committed on school, park, or hospital property (§ 243.2, subd. (a)), and both counts were sentenced together. Finding true the allegations that appellant had served three prior prison terms (§ 667.5, subd. (b)), and had suffered two prior strike convictions (§§ 1170.12, subd. (b), 667, subd. (b)–(j)), the trial court sentenced appellant to nine years in state prison for count 1, plus a consecutive term of 364 days in county jail for count 2.

This case presents the following issue: In a prosecution for resisting an executive officer, does a trial court abuse its discretion by excluding evidence relevant to whether the officer exceeded his or her authority under section 830.1, subdivision (a) offered to show that he or she was not engaged in the lawful performance of his or her duties in attempting to detain the defendant? The defense in this case sought to present evidence that the officers acted beyond the scope of their authority in attempting to detain appellant because: (1) they were outside the jurisdictional limits of the Los Angeles Police Department (LAPD), and appellant had committed no public offense, nor was there probable cause to believe he had committed a public offense within the LAPD's jurisdiction (§ 830.1, subd. (a)(1)); (2) there was no agreement giving the LAPD authority in the City of Lynwood, where the defense sought to show the detention occurred (§ 830.1, subd. (a)(2)); and (3) appellant had committed

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[1] Undesignated statutory references are to the Penal Code.

no public offense, nor did the officers have probable cause to believe appellant had committed any public offense in their presence (§ 830.1, subd. (a)(3)).

The proffered defense evidence was highly relevant and might have provided a complete defense to the charged crime. We therefore conclude the trial court abused its discretion in excluding the proffered defense evidence, and, because the error cannot be deemed harmless, we reverse the conviction as to count 1, resisting an executive officer.[2]

FACTUAL BACKGROUND

Around 2:50 p.m. on September 5, 2016, Aaron Thompson, a police officer employed by the LAPD, was on duty in the area of 103rd Street just west of Alameda. A bystander approached the officer, and reported a vehicle parked on Alameda with a man behind the wheel who seemed to be passed out. Officer Thompson located the vehicle, parked behind it, and activated his dashboard video camera and hazard lights. As he approached, he could see appellant reclining in the driver's seat, apparently unconscious. Appellant was wearing jeans but no shirt, and was bleeding from

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[2] Appellant did not obtain a certificate of probable cause and does not challenge his conviction or sentence on count 2. Accordingly, the judgment of conviction on count 2 is affirmed. Further, in light of the disposition as to count 1 based on the trial court's erroneous exclusion of the proffered defense evidence, we need not reach appellant's remaining contentions that the trial court committed prejudicial error in failing to instruct sua sponte on the lesser included offense of misdemeanor resisting a peace officer (§ 148, subd. (a)(1)); and that the fines, fees, and assessments ordered by the trial court without a determination of appellant's ability to pay violated appellant's due process rights.

small lacerations all over his face, head and ears. Officer Thompson was unable to wake him. After getting a whiff of alcohol from the car, the officer conducted a "plain sight" look inside the vehicle for alcohol or weapons, but saw neither. He also opened the car doors looking for some identification, but found none. He then called for emergency medical assistance.

Paramedics were able to awaken appellant, but when they tried to determine appellant's condition, he became agitated, aggressive, and repeatedly got in and out of his car. Officer Thompson called for backup. LAPD Officer Ingram was the first backup to arrive on the scene. He suggested that if appellant did not want medical treatment, "then that's on him," and asked appellant if he could drive. Appellant responded that his car was inoperable. Officer Thompson told him the car would have to be towed because it was parked illegally.

As other officers arrived on the scene, they discussed what should be done about appellant and the car. Officer Jeff Joyce believed they should pull appellant out of the vehicle to allow the police to investigate whether he was suffering from a mental illness, was under the influence of drugs or alcohol, or was a suspect or victim in a crime. Sergeant Sparkman, Officer Thompson's supervisor, questioned why appellant was not already in custody. Officer Thompson responded, "because he was covered in blood. He didn't do anything wrong." At one point during the officers' discussion, appellant got out of the car and kneeled down on the ground where he remained for almost two minutes before reentering the vehicle.

Sergeant Sparkman instructed the officers to put gloves on, which the officers understood to mean they would be "taking the suspect into custody." After putting on his gloves, Officer Joyce said to appellant, "We can't have you sitting in the middle of the

road right here. You either go with the ambulance or you go with the police, I'm going to let you decide." Officer Joyce then leaned into the car, removed the keys from the ignition, and tossed them on top of the car. Appellant immediately jumped out of the vehicle and demanded to know what had happened to his keys. Officer Joyce attempted to grab appellant around the waist, but appellant dove back into the car. As Officer Joyce began to give the standard warning that he was about to use his taser, appellant kicked the officer in the right upper thigh with his left leg. Officer Joyce immediately tased appellant in the chest, but the taser appeared to have no effect—appellant simply pulled the taser dart out of his sternum.

After being tased, appellant grabbed the steering wheel and braced himself inside the car so the police could not pull him out. Other officers tased appellant several more times, and eventually were able to extract him through the passenger side door and take him into custody. Appellant was transported to the hospital. No investigation was conducted to determine if appellant was under the influence of alcohol or narcotics, and no alcohol, drugs, drug paraphernalia, or weapons were found in the vehicle.

DISCUSSION

I. The Exclusion of Evidence Proffered by the Defense Regarding the Limits of Officer Joyce's Authority Under Section 830.1, Subdivision (a)

A. *Procedural background*

It was the defense theory of the case that these LAPD officers were not lawfully engaged in the performance of their duties as executive officers under section 69 because they lacked authority to detain appellant pursuant to section 830.1, subdivision (a). In support of this defense, appellant sought to present evidence that the encounter took place not in Los

Angeles, but in the city of Lynwood, outside the jurisdiction of the LAPD, there were no parking restrictions in effect on the stretch of road where appellant's vehicle was parked, and appellant's vehicle was neither illegally parked nor obstructing traffic.[3]

Defense counsel argued that this evidence would establish a complete defense to the charge of resisting an executive officer because: (1) the LAPD officers involved in appellant's detention were acting outside of their jurisdiction, and had no authority to enforce parking regulations in the city of Lynwood under section 830.1, subdivision (a)(1); (2) the city of Lynwood had no agreement with the LAPD to conduct parking enforcement within Lynwood city limits, thus section 830.1, subdivision (a)(2) conferred no jurisdiction to the LAPD in such matters; and (3) section 830.1, subdivision (a)(3) gave these LAPD officers no authority to conduct an investigation or detain appellant because appellant was not illegally parked or obstructing traffic, and had thus committed no public offense in the officers' presence.

The trial court excluded the proffered evidence, ruling that any evidence regarding jurisdiction and parking restrictions was irrelevant to the issue of appellant's guilt under section 69

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[3] The proffered evidence included parcel maps showing Lynwood city limits in the area where appellant's vehicle was parked, certified records from the County Recorder's Office showing the property in the area where appellant's vehicle was parked to be in the city of Lynwood, and the testimony of the Lynwood city engineer and other city officials about the width of the road and parking regulations in effect where appellant's car was parked.

because "all officers have jurisdiction within the State of California."

Defense counsel revisited the issue during trial, arguing that because a police officer has only limited authority to act outside of his jurisdiction, the court's ruling effectively relieved the prosecution of the burden of establishing an element of the offense; that is, whether the officers were lawfully engaged in the performance of their duty in attempting to detain appellant. The court rejected the argument.

Following testimony that the Sheriff's Department had been called to the location, defense counsel again asked the court to reconsider its ruling. Arguing that "different rules of engagement apply" when police officers act outside of their jurisdiction, counsel informed the court that two witnesses from the city of Lynwood were under subpoena and available to testify to the jurisdiction and parking regulation issues. The trial court stated its previous ruling would stand, and admonished counsel that "there [would not] be any more questions about parking or jurisdiction." The witnesses were excused.[4]

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[4] Prior to sentencing, the defense once more challenged the trial court's ruling in a motion to dismiss/motion for a new trial, arguing that the defense had been precluded from confronting and impeaching witnesses with evidence that would have established the officers detained appellant outside their jurisdiction and appellant had violated no parking or traffic regulations. Appellant contended that the exclusion of this evidence denied appellant of a fair trial and due process. The motion was denied.

B. *The trial court erred in excluding the proffered evidence*

Appellant contends the trial court's determination that the proffered evidence was irrelevant was based on an erroneous interpretation of section 830.1, and the court's exclusion of the evidence deprived appellant of an opportunity to present a defense, lessened the People's burden of proof, and denied appellant due process and a fair trial. We agree.

We begin with the proposition that only relevant evidence is admissible. (Evid. Code, § 350.) Evidence is relevant if it has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210; *People v. Jackson* (2016) 1 Cal.5th 269, 330 (*Jackson*).) All relevant evidence is presumptively admissible unless excluded under the federal or California Constitution or by statute. (*People v. Harris* (2005) 37 Cal.4th 310, 337.) However, a " 'trial court has considerable discretion in determining the relevance of evidence.' " (*Jackson*, at p. 330.)

We review a trial court's rulings on the admissibility of evidence for abuse of discretion (*People v. Cowan* (2010) 50 Cal.4th 401, 482), and will not disturb the court's evidentiary rulings " ' "except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." ' "[5] (*Jackson*, *supra*, 1 Cal.5th at p. 330.)

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[5] Because the trial court excluded all of the proffered evidence on relevance grounds, we do not consider whether the court could have exercised discretion to exclude some of the evidence on the ground that "its probative value [was]

A violation of section 69—resisting an executive officer—is committed when a person uses force or violence to knowingly resist an executive officer in the performance of his or her duty. (*In re Manuel G.* (1997) 16 Cal.4th 805, 814 (*Manuel G.*).) One of the elements of the offense is that the officer be engaged in the lawful performance of his or her duties at the time the resistance occurs. (*Id*. at p. 815; *People v. Wilkins* (1993) 14 Cal.App.4th 761, 778.) As our Supreme Court has explained, "[t]he long-standing rule in California and other jurisdictions is that a defendant cannot be convicted of an offense against a peace officer ' "*engaged in . . . the performance of* . . . [his or her] *duties*" ' unless the officer was acting lawfully at the time the offense against the officer was committed. [Citations.] 'The rule flows from the premise that because an officer has no duty to take illegal action, he or she is not engaged in "duties," for purposes of an offense defined in such terms, if the officer's conduct is unlawful. . . . [¶] . . . [T]he lawfulness of the victim's conduct forms part of the corpus delicti of the offense.' " (*Manuel G.*, *supra*, at p. 815; *People v. Sibrian* (2016) 3 Cal.App.5th 127, 133 ["officer must be acting lawfully when the resistance occurs"]; *People v. Rasmussen* (2010) 189 Cal.App.4th 1411, 1418 [section 69 liability requires that officer was lawfully engaged in performance of duty at time of resistance].)

Section 69 does not define "executive officer," but this term has long been interpreted as including peace officers at all

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substantially outweighed by the probability that its admission [would] (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.)

governmental levels as a matter of law. (See *Manuel G.*, *supra*, 16 Cal.4th at pp. 818–819; *People v. Mathews* (1954) 124 Cal.App.2d 67, 68–70 [interpreting term "executive officer" as stated in section 67]; *People v. Kerns* (1935) 9 Cal.App.2d 72, 73–75 [interpreting term "executive officer" as set forth in section 68].) "Peace officers," in turn, are defined under section 830.1, subdivision (a) to include any police officer employed by a city or a district.

Although "[t]he authority of these peace officers extends to any place in the state" (§ 830.1, subd. (a)), the Legislature has imposed certain "geographic, temporal, and other limitations" on the exercise of their authority. (*People v. Pennington* (2017) 3 Cal.5th 786, 793.) Section 830.1, subdivision (a) thus delineates a peace officer's authority as follows: "(1) As to any public offense[6] committed or which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves. [¶] (2) Where the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by him or her to give consent, if the place is within a city, or of the sheriff, or person authorized by him or her to give consent, if the place is within a county. [¶] (3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate

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6 A "public offense" refers to misdemeanors and infractions as well as felonies. (§ 16; *People v. Zacarias* (2007) 157 Cal.App.4th 652, 658; *People v. Tennessee* (1970) 4 Cal.App.3d 788, 791.)

danger to person or property, or of the escape of the perpetrator of the offense."

It was the defense theory in this case that a peace officer who lacks authority under section 830.1, subdivision (a) to detain a person or otherwise act is not engaged in the lawful performance of his or her duty, and that if Officer Joyce was not acting lawfully, then appellant could not be convicted of violating section 69. Accordingly, the defense proffered evidence that Officer Joyce was not acting under the authority given by section 830.1, subdivisions (a)(1), (2), or (3), and the prosecution could not sustain its burden of proof on this element of the offense.

In support of the defense, appellant sought to present evidence that the incident occurred in Lynwood, a city outside the jurisdiction of the LAPD, to establish that Officer Joyce and the other LAPD officers lacked authority to detain appellant under section 830.1, subdivision (a)(1). The trial court ruled this evidence irrelevant. Appellant was also prepared to show these officers lacked the prior consent of anyone empowered on behalf of the city of Lynwood to permit LAPD peace officers to operate within Lynwood's jurisdiction as provided under subdivision (a)(2). The trial court categorically precluded such evidence, even though witnesses were under subpoena and available to testify.

The defense further sought to prove that appellant had not committed any public offense in the officers' presence, and the officers had no probable cause to believe he had in order to establish the officers lacked authority to detain him under subdivision (a)(3). Thus, when Sergeant Sparkman asked Officer Thompson why appellant was not in custody, Officer Thompson responded that "[h]e didn't do anything wrong." The evidence also showed there had been no investigation to determine if appellant was in fact under the influence of alcohol or narcotics,

and no alcohol, drugs, or weapons of any kind were recovered.[7] Finally, to counter testimony that appellant had committed a parking violation and was blocking traffic the defense attempted to introduce evidence of the parking restrictions in force and the width of the road where appellant was parked to establish he was neither illegally parked nor impeding traffic. The trial court also declared this evidence irrelevant to the issue of appellant's guilt under section 69.

In order to obtain a conviction for resisting an executive officer here, the People were required to prove that Officer Joyce was an executive officer engaged in the lawful performance of his duties. The trial court's exclusion of this evidence therefore relieved the State of the burden of proving every factual and legal element of offense charged in violation of appellant's constitutional rights to due process under the Fourteenth Amendment. (*Sullivan v. Louisiana* (1993) 508 U.S. 275, 277–278; *In re Winship* (1970) 397 U.S. 358, 364 [Due Process " 'protects the accused against conviction except upon proof beyond a reasonable doubt of *every fact* necessary to constitute the crime with which he is charged' "]; *People v. Figueroa* (1986) 41 Cal.3d 714, 725; *People v. Wilkins*, *supra*, 14 Cal.App.4th at p. 778.) The trial court's ruling also prevented appellant from presenting what might have been a complete defense to the charged crime, in violation of the constitutional guarantee to a criminal defendant to " ' "a meaningful opportunity to present a

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[7] In this regard, the trial court also sustained on relevance grounds the prosecution's objections to questions about any investigation the officers conducted regarding whether appellant was under the influence of alcohol or narcotics.

complete defense." ' " (*Holmes v. South Carolina* (2006) 547 U.S. 319, 324–326.)

The proffered evidence bore directly on a material and contested element of the charged offense in this case. The trial court abused its discretion in excluding the evidence as irrelevant.

C. *The error cannot be deemed harmless*

Our Supreme Court has held that while the application of ordinary rules of evidence generally does not implicate the federal constitutional rights of the accused, "the complete exclusion of evidence intended to establish an accused's defense may impair his or her right to due process of law." (*People v. Cunningham* (2001) 25 Cal.4th 926, 999; *People v. Fudge* (1994) 7 Cal.4th 1075, 1102–1103.) On appeal, "[w]e evaluate evidentiary errors implicating the defendant's Fifth, Sixth and Fourteenth Amendment rights for prejudice under a 'harmless beyond a reasonable doubt' standard." (*People v. Hall* (2018) 23 Cal.App.5th 576, 600.) Thus, in such a case where, as here, the error prevents the presentation of a defense on a material issue or impermissibly lowers the prosecution's burden of proving beyond a reasonable doubt an element of the offense, the standard for evaluating federal constitutional errors under *Chapman v. California* (1967) 386 U.S. 18, 24 applies. Under that standard, we conclude the trial court's error in excluding all of the proffered defense evidence was prejudicial.

Citing *Illinois v. Wardlow* (2000) 528 U.S. 119, 125 (*Wardlow*) and *In re H.M.* (2008) 167 Cal.App.4th 136, 144 (*H.M.*), respondent maintains the error must be deemed harmless, because regardless of whether the officers had any duty to investigate appellant's parking violation, Officer Joyce lawfully detained appellant to investigate "whether [he] was under the

influence of alcohol or drugs, suffering from a mental illness, and whether appellant was either the victim or the suspect of a crime." *Wardlow* and *H.M.*, however, are inapposite. The issue in both cases was whether certain conduct by a person prior to a *Terry*[8] stop (sudden, unprovoked flight from police in *Wardlow*, and "unusual, suspicious behavior" in *H.M.*) may give rise to a reasonable suspicion that the defendant is armed, justifying a pat-search for weapons. Neither case involved the issue the defense sought to raise in this case: whether the police had the requisite authority in the first instance to detain appellant in order to conduct an investigation outside of the LAPD's jurisdiction in the absence of any evidence that appellant had committed a public offense in the officers' presence.

The Attorney General further cites *People v. Rogers* (1966) 241 Cal.App.2d 384, 388 (*Rogers*) to contend that police officers have authority to investigate crimes within 500 yards of a jurisdictional border, and therefore any error in excluding the jurisdictional evidence here was harmless. This argument also lacks merit. First, because the trial court excluded all of the proffered evidence concerning the jurisdictional borders of the city of Lynwood, respondent cannot argue outside the record on appeal that the incident occurred within any distance of the Lynwood-Los Angeles city border. Further, *Rogers* held that when a police officer "acts outside his jurisdiction he is generally acting as a private person." (*Id.* at p. 388, citing *People v. Martin* (1964) 225 Cal.App.2d 91, 94.) But a private person is subject to the same constraints in effecting an arrest as section 830.1,

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[8] *Terry v. Ohio* (1968) 392 U.S. 1.

subdivision (a)(3) imposes on a police officer acting outside of his jurisdiction. As provided under section 837: "A private person may arrest another: [¶] 1. For a public offense committed or attempted in his presence. [¶] 2. When the person arrested has committed a felony, although not in his presence. [¶] 3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it." For this reason as well, respondent's claim that the trial court's error was harmless must fail.

Finally, we reject the People's argument that any error in excluding the proffered evidence was harmless because defense counsel was able to argue to the jury that the officers were not acting pursuant to their authority as executive officers. However, the attorneys' arguments to the jury do not constitute evidence and the jury is free to disregard them, especially if such arguments conflict with the court's instructions on the law or the evidence admitted at trial. (CALJIC No. 1.02; CALCRIM No. 222; *People v. Barajas* (1983) 145 Cal.App.3d 804, 810.) Because of the trial court's exclusion of the proffered evidence, the jury was bound to disregard defense counsel's assertion as unsupported by any evidence admitted at trial that Officer Joyce was not lawfully performing his duties as an executive officer when he was attempting to detain appellant.

Chapman harmless error review requires reversal unless it can be shown the error was harmless beyond a reasonable doubt. (*People v. Abilez* (2007) 41 Cal.4th 472, 526.) A reviewing court conducting the harmless error inquiry under *Chapman* must therefore ask: "Is it clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error?" (*Neder v. United States* (1999) 527 U.S. 1, 18; *People v. Geier* (2007) 41 Cal.4th 555, 608.) The answer here is no.

As discussed above, in order to convict on the charge of resisting an executive officer in violation of section 69, the prosecution was required to prove, and the jury had to find that Officer Joyce was engaged in the lawful performance of his duty in attempting to detain appellant when appellant kicked him. Because the excluded evidence would have established the officer had no authority to detain appellant, it would have negated the element of the lawful performance of a duty. And unless the prosecution were able to rebut the defense evidence, proof of the charge would have failed. The trial court's error in excluding the proffered evidence was not harmless.

DISPOSITION

The judgment of conviction as to count 1, resisting an executive officer, is reversed, and affirmed as to count 2. The matter is remanded to the trial court for further proceedings.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.